

Federal vs. state authority to regulate drones

Federal law is in flux and it's unclear whether various proposed laws will be approved that either expressly authorize or foreclose the ability of local jurisdictions to regulate drone operations. However, under current federal statutory schemes, there are viable arguments that local rules may regulate drone operations in areas that federal law has left untouched. The federal preemption doctrine derives from the Supremacy Clause of the Constitution and preemption may be express or implied. Generally, there are three categories of federal preemption: (1) express preemption; (2) conflict preemption; and (3) field preemption.

According to a December, 2015 FAA Fact Sheet, no state or local jurisdiction should enact laws without consulting with the FAA if the laws deal with:

- Drone operational restrictions on flight altitude or flight paths, operational bans, or any regulation of the navigable airspace. An example includes any ordinance banning drone operations within city limits or within certain distances of landmarks.
- Mandating equipment or training for drones related to aviation safety, such as geo-fencing.

However, the FAA did acknowledge that laws traditionally related to state and local police powers – including land use, zoning, privacy, trespass, and law enforcement operations - would generally not be subject to federal preemption. Examples of laws that the FAA has deemed appropriate for local regulation include:

- Requirements for police to obtain a warrant prior to using a drone for surveillance;
- Prohibiting drone operations for voyeurism;
- Prohibiting drone operations for hunting or fishing, or for interfering with/harassing hunters or fisherman; and
- Prohibiting drones with firearm or other similar weapon attachments.